Patent
Attorney's Docket No. 033462-001 Reexam

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of	)	
	)	
Tony PERVAN	)	Group Art Unit: 3635
	)	
Application No.: 90/005,744	)	Examiner: Y. Horton
	)	
Filed: June 13, 2000	)	
	)	
and	)	
	)	
Application No. 09/343,696	)	
	)	
Filed: June 30, 1999	)	
	)	
For: METHOD FOR JOINING A BUILDING BOARD	)	

INFORMATION DISCLOSURE STATEMENT TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is an Information Disclosure Statement and accompanying form PTO-1449 for the above-identified patent application.

[X] No additional fee for submission of an IDS is required.

[ ] The fee of $180.00 (1806) as set forth in 37 C.F.R. § 1.17(p) is also enclosed.

[ ] A statement under 37 C.F.R. § 1.97(e) is also enclosed.

[ ] A statement under 37 C.F.R. § 1.97(e), and the fee of $180.00 (1806) as set forth in 37 C.F.R. § 1.17(p) are also enclosed.

[ ] Charge $_____ to Deposit Account No. 02-4800 for the fee due.

[ ] A check in the amount of $_____ is enclosed for the fee due.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: 9-23-03

By: William C Rowland
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(05/03)

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Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

Submitted herewith is a copy of an opinion recently issued by the U.S. Court of Appeals for the Federal Circuit in the case of Alloc, Inc. v. International Trade Commission. In view of the fact that the opinion discusses the application at issue, a copy is being submitted in this file. The opinion incorrectly interprets the intention of the patentee in the remarks accompanying the submission of claims 21, 22, and 23, wherein the court infers that the patentee somehow acknowledged that "play exists" in all claims of the '621 patent. In the paragraph recited by the Court on page 25 of the opinion (2003 U.S. App. LEXIS 18774 at 25), Applicants had intentionally submitted claims that did not include the term "play". As recognized by the dissenting opinion, the Applicants did not intend to include the limitation that appears in claim 1 of the '621 patent calling for a joint in which "play exists" in the independent claims 21, 22, and 23. As also noted by the dissenting opinion, claim 22 cannot reasonably be construed to require play because, but for the omitted limitation calling for a joint where "play exists", claim 22 would be identical to independent claim 1. Thus, according to the literal language of the claim, as well as common claim construction principles, independent claims 21, 22, and 23 do not include play. In the remarks accompanying the submission of claims 21, 22, and 23, the reference to the "play that exists" was a reference to the limitation in claim 1, i.e., "where a play exists", which was expressly omitted from claims 21, 22, and 23.

In the event that there are any questions concerning this Opinion, or the application in the general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution of the application may be expedited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: September 23, 2003

By: William C Rowland
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CERTIFICATION OF SERVICE

I, William C. Rowland, hereby certify that a true copy of the foregoing communication, was mailed, via first class mail, on September 23, 2003, to:

Thomas P. Pavelko, Esq.
Stevens, Davis, Miller & Mosher, LLP
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Attorney for Third-Party Requestor

William C Rowland
William C. Rowland
Registration No. 30,888

Date: September 23, 2003